



California Fair Political Practices Commission

October 28, 1986

Stephanie Atigh
Assistant City Attorney
200 Lincoln Avenue
Salinas, CA 93901

Re: Your Request for Informal
Assistance; Our File No. I-86-270

Dear Ms. Atigh:

You have requested advice concerning Planning Commissioner Robert T. Adcock's duties under the conflict of interest provisions of the Political Reform Act.^{1/} You have informed us that Mr. Adcock has not authorized your request for advice. Accordingly, we consider your letter to be a request for informal assistance pursuant to Regulation 18329(c) (copy enclosed).

The purpose of informal assistance is to provide you with general guidance regarding the Political Reform Act. Informal assistance does not provide the immunity set forth in Government Code Section 83114(a) or (b). Regulation 18329(c)(3). In the context of informal assistance, we cannot advise you whether a particular public official has a conflict of interest and is disqualified from participating in a specific governmental decision. Therefore, we have restated your question in general terms.

If Mr. Adcock wishes to request our formal written advice concerning a specific decision, either directly or through your office, we will be happy to respond with a formal advice letter pursuant to Section 83114(b) and Regulation 18329(b). If he authorizes you to request advice on his behalf, please specifically inform us in writing that you are so authorized and provide Mr. Adcock's mailing address. Regulation 18329(b)(2)(A).

^{1/} Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise noted. Commission regulations appear at 2 California Administrative Code Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Administrative Code.

QUESTION

Regulation 18702.2 contains monetary guidelines for determining whether the effect of a decision on the gross revenues, expenses, assets or liabilities of a business entity will be considered material. What effects must be considered when an official has an investment in a water company which will serve a new development or other project approved by the official's agency?

CONCLUSION

In the situation described in your letter, the public official must consider the reasonably foreseeable effects of the decision on the gross revenues and assets of the water company.

FACTS

In the City of Salinas, one condition for approval of a subdivision or other development project is a statement from the water company which services the area that there is sufficient water for the project. Once the project is approved, the developer and water company determine who will pay the cost of the wells, pumps, pipes and other necessary improvements to supply water to the project. In some cases, the water company requires a cash deposit of a specified sum per unit from the developer. This deposit is set aside until it is time to drill the well. Then the funds are disbursed to the water company which arranges for a contractor to dig and install the well. The water company owns, maintains and repairs all improvements, including those paid for by the developer.

ANALYSIS

Section 87100 prohibits a public official from making, participating in, or using his or her position to influence a governmental decision in which the official knows or has reason to know he or she has a financial interest. An official has a financial interest in a decision if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from the effect on the public generally, on, among other interests, any business entity in which the official has a direct or indirect investment worth \$1,000 or more. Section 87103(a).

In the situation you have presented, it is necessary to determine whether there will be a foreseeable material

financial effect on the water company in which the official has an investment as a result of a development decision. Regulation 18702.2 (copy enclosed) provides monetary guidelines for determining whether the effect of a governmental decision on a business entity will be considered material. These monetary guidelines differ depending on the financial size of the business entity. However, in each instance it is necessary to consider whether the decision will affect the business entity's gross revenues, expenses, assets or liabilities. You have asked for clarification of the terms "gross revenues," "expenses" and "assets" for purposes of analyzing the effect of land use decisions on the water company.

"Gross revenues," as used in Regulation 18702.2, means all revenues from sales, and all contracts, grants and other payments. An increase or decrease in the number of customers served by the water company would affect the water company's gross revenues. Overhead expenses and other costs of producing the revenues are not subtracted from the gross revenues. See, Carey Opinion, 3 FPFC Opinions 99 (No. 76-087, Nov. 3, 1977) (copy enclosed).

You have specifically asked whether the cash deposit paid by the developer to the water company for the costs of well installation would be considered part of the water company's gross revenues for purposes of Regulation 18702.2. In our opinion, these payments are not included in the water company's gross revenues so long as the cost of installing the wells is equal to or greater than the amount of the cash deposit collected from the developer. In this situation, the water company is more appropriately characterized as the intermediary for payment for the well installation costs. If the costs were paid by the developer directly to a contractor, we would not consider the payments to be included in the water company's gross revenues. The fact that the water company, rather than the developer, deals with the contractor who installs the wells does not change our conclusion. However, to the extent that the deposit collected by the water company exceeds the actual costs incurred by the water company for well installation, the deposit would affect the water company's gross revenues.

"Expenses," as used in Regulation 18702.2, means taxes, application fees, licensing or permit fees, and any other costs incurred by a business entity in order to comply with a governmental decision. You have asked specifically whether the payment for well costs and other improvements by the developers are considered an avoidance of additional expenses

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for purposes of Regulation 18702.2. We think those payments are better characterized as affecting the assets or liabilities of the water company. If the water company were required to install a well for which it would not be compensated by the developers, customers, or some other person, this would be an "expense."

To the extent that the water company acquires new wells, pipes, pumps and other improvements paid for by the developers, the water company's assets are affected by the decision. Any increase or decrease in the water company's assets should be calculated pursuant to any actual benefit gained by the water company. In your letter you described the water company's accounting methods regarding depreciation of the improvements and treatment of the capital received from the developers. We do not consider depreciation in determining the increase or decrease in the water company's assets, just as we do not consider costs of producing revenues when determining the effect on the water company's gross revenues.

If you have any further questions regarding this matter, please contact me at (916) 322-5901.

Sincerely,

Diane M. Griffiths
General Counsel



By: Kathryn E. Donovan
Counsel, Legal Division

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